



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 NO. HARBOR DR.
SAN DIEGO, CA 92132-0059

COMNAVREGSWINST 5810.1
Code N05HR
03 SEP 2004

IN REPLY REFER TO:

COMNAVREGSW INSTRUCTION 5810.1

Subj: SUBMISSION OF RECOMMENDATION FOR TRIAL BY GENERAL
COURT-MARTIAL

Ref: (a) JAGINST 5800.7D
(b) COMNAVREGSWINST 5400.2
(c) UCMJ
(d) MCM (2002 ed.)

Encl: (1) Accused Data Sheet
(2) Investigating Officer's Report (DD Form 457)
(3) Charge Sheet (DD Form 458)

1. Purpose. To provide procedures for the submission of recommendations for trial by general court-martial to Commander, Navy Region Southwest (CNRSW). Strict adherence to these procedures will minimize delay and promote the expeditious processing of such recommendations.

2. Cancellation. COMNAVBASESDIEGOINST 5810.1K.

3. Procedures. Section 0128 of reference (a) authorizes forwarding of recommendations for trial by general court-martial, in the absence of specific direction to the contrary from competent authority, to the nearest regional coordinator exercising general court-martial jurisdiction. In the San Diego area, CNRSW, as regional coordinator, currently convenes all general courts-martial in response to requests from area Naval activities as set forth in reference (b).

a. Before forwarding a recommendation that a charge or specification be referred to general court-martial (GCM) for trial, the requesting Naval activity shall conduct a thorough and impartial Article 32 investigation of all the matters set forth in such charge or specification. The pretrial investigation shall be conducted in compliance with Article 32 of reference (c) and R.C.M. 405 of reference (d). The investigating officer shall use Department of Defense Form 457 (DD Form 457), (enclosure (2)), in making a written report of the investigation.

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b. A recommendation to refer charges to GCM for trial, may be forwarded without conducting an Article 32 investigation, provided the accused has agreed, in writing, to waive the right to an Article 32 investigation. The accused's signed, written waiver of the Article 32 investigation with respect to investigation of such charge or specification must be included as an enclosure to the recommendation.

c. In view of the protracted nature and costs of a GCM, all recommendations shall be signed by the commanding officer or by an appropriate flag officer in command.

d. When an accused is ordered into arrest or confinement, commands shall ensure that there is strict compliance with the provisions of Articles 10¹ and 33² of the UCMJ. Strict compliance with Articles 10 and 33, UCMJ, will protect an accused's right to a speedy trial and the command and societal interest in the prompt administration of justice.

e. To provide background information in the event a "speedy trial" issue is later raised, all recommendations should be accompanied by written explanation of any delay in excess of three days between any of the following consecutive steps:

(1) In cases involving unauthorized absence, the date of the accused's return to naval jurisdiction and the date the service record was received with information necessary for making service record entries. This should be supported with copies of correspondence, including message traffic.

(2) The date, after being ordered into arrest, restriction or confinement, that the accused was informed of the charges against him pursuant to Article 10 reference (c).

(3) The date the pretrial investigation was ordered.

(4) The date the investigation was commenced.

¹ Article 10, UCMJ, in relevant part, states: "When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him."

² Article 33, UCMJ, states: "When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the Investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay."

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(5) The date the investigation was completed.

(6) The date the report of investigation with recommendation for trial by GCM was forwarded to CNRSW.

f. Information shall be provided regarding the nature and duration of any pretrial restraint imposed.

4. Witnesses. R.C.M. 703(e) (1) and (2) of reference (d) will be complied with in the forwarding of requests for witnesses to CNRSW. A minimum of five working days should be allowed for the processing of such requests and the allocation of required funding. Complete information as to the location and availability of all witnesses, whether military or civilian shall be provided. No witnesses or accused shall be transferred beyond the jurisdiction of CNRSW or be granted a leave of absence unless and until clearance is first obtained from CNRSW via Staff Judge Advocate for CNRSW. The SJA for CNRSW may be contacted at DSN: 522-1418 or COM: (619) 532-1418.

5. Contents of Forwarding Letter of Transmittal. Consistent with R.C.M. 401(c)(2)(A) of reference (d) and its discussion, recommendations shall include:

- a. A completed accused data sheet, enclosure (1).
- b. A summary of the available evidence relating to each offense.
- c. Evidence of previous convictions and nonjudicial punishments of the accused.
- d. An indication that the accused has been offered and refused nonjudicial punishment, if applicable.
- e. Any other matters required by superior authority or deemed appropriate by the forwarding commander.

6. Forwarding recommendations. Unless otherwise directed, all recommendations shall be submitted to: Commander, Navy Region Southwest (Code N05HR), San Diego, California 92132-0058, and shall include the following for each accused:

- a. Original and five copies of Article 32 proceedings with all exhibits.

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b. Original and five copies of DD Form 457 (Investigating Officer's Report), enclosure (2).

c. Original and five copies of DD Form 458 (Charge Sheet), enclosure (3).

d. Original and five copies of the command's forwarding letter.

e. Original service record of the accused.

The original and all copies of the recommendation for GCM shall be forwarded as separate and distinct sets. Each set is to be adequately fastened and is to contain the Article 32 proceedings, exhibits, DD Form 457, DD Form 458, and related correspondence in legible form. DD Forms may be found at www.dtic.mil/whs/directives/infomgt/forms/ddforms.

7. Funding. All funding before referral of charges to GCM for trial will be borne by the accused's command.



M. R. ALLEN
Deputy and
Chief of Staff

Distribution:

www.cnrsw.navy.mil/admin/menu.htm

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ACCUSED'S PERSONAL DATA SHEET

1. CONVENING AUTHORITY:
2. NAME/RATE/SSN:
3. AGE: BIRTH DATE:
4. CURRENT ENLISTMENT:
5. TOTAL ACTIVE DUTY SERVICE:
6. AFQT:
7. EDUCATION:
8. PAY ENTRY DATE:
9. BASIC PAY:
10. MARITAL STATUS / CHILDREN:
11. DECORATIONS / AWARDS:
12. DISCIPLINARY HISTORY / RECORD:
13. EVALUATIONS:

[Command]	[Period of Report]	[Average /5.0]

14. PRETRIAL CONFINEMENT DATES:
15. RESTRICTION IN LIEU OF ARREST DATES:
16. LEAVE ADDRESS / HOME OF RECORD:

Enclosure (1)

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI)	b. GRADE	c. ORGANIZATION	d. DATE OF REPORT
2a. TO: (Name of Officer who directed the investigation - Last, First, MI)	b. TITLE	c. ORGANIZATION	
3a. NAME OF ACCUSED (Last, First, MI)	b. GRADE	c. SSN	d. ORGANIZATION
			e. DATE OF CHARGES

(Check appropriate answer)

YES NO

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)		
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)		
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)		
7a. NAME OF DEFENSE COUNSEL (Last, First, MI)	b. GRADE	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any)
		b. GRADE
c. ORGANIZATION (If appropriate)		c. ORGANIZATION (If appropriate)
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)

9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)

a. PLACE	b. DATE

I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

c. SIGNATURE OF ACCUSED		
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: <i>(Check appropriate answer)</i>		
a. THE CHARGE(S) UNDER INVESTIGATION	YES	NO
b. THE IDENTITY OF THE ACCUSER		
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31		
d. THE PURPOSE OF THE INVESTIGATION		
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE		
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT		
g. THE RIGHT TO CROSS-EXAMINE WITNESSES		
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED		
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION		
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING		
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>		
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL		

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c".) Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: <i>(Check appropriate answer)</i>				
NAME <i>(Last, First, MI)</i>	GRADE <i>(If any)</i>	ORGANIZATION/ADDRESS <i>(Whichever is appropriate)</i>	YES	NO
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.				
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL <i>(If not attached)</i>		YES	NO
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED				
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. <i>(See R.C.M. 909, 916(k).)</i>				
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT <i>(If Yes, specify in Item 21 below.)</i>				
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM				
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED				
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. <i>(See R.C.M. 405(d) (1).)</i>				
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER <i>(Specify in Item 21 below)</i>				
21. REMARKS <i>(Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)</i>				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED <i>(Last, First, Middle Initial)</i>		2. SSN	3. GRADE OR RANK	4. PAY GRADE
5. UNIT OR ORGANIZATION			6. CURRENT SERVICE	
			a. INITIAL DATE	b. TERM
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
0.00				
II. CHARGES AND SPECIFICATIONS				
10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE SPECIFICATION:				
III. PREFERRAL				
11a. NAME OF ACCUSER <i>(Last, First, Middle Initial)</i>		b. GRADE	c. ORGANIZATION OF ACCUSER	
d. SIGNATURE OF ACCUSER			e. DATE (YYYYMMDD)	
<p>AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this _____ day of _____, _____, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>_____ <i>Typed Name of Officer</i></p> <p>_____ <i>Grade</i></p> <p>_____ <i>Signature</i></p> </div> <div style="width: 45%;"> <p>_____ <i>Organization of Officer</i></p> <p>_____ <i>Official Capacity to Administer Oath</i> <i>(See R.C.M. 307(b) must be commissioned officer)</i></p> </div> </div>				

12.

On _____, _____, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

Typed Name of Immediate Commander

Organization of Immediate Commander

Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at _____ hours, _____, _____ at _____
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ _____

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE (YYYYMMDD)

Referred for trial to the _____ court-martial convened by _____

_____, _____, subject to the following instructions: ²

By _____ of _____
Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15.

On _____, _____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 601(e) concerning instructions. If none, so state.